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6 *Pro Se Objector*

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 Case No. CV 11-01726 RS

11 [Hon. Richard Seeborg]

12 ANGEL FRALEY; PAUL WANG; SUSAN  
13 MAINZER; JAMES H. DUVAL, a minor, by  
14 and through JAMES DUVAL, as Guardian ad  
15 Litem; and W.T., a minor, by and through  
16 RUSSELL TAIT, as Guardian ad Litem;  
17 individually and on behalf of all others  
18 similarly situated,

16 Plaintiffs

17 v.

18 FACEBOOK, INC., a corporation; and DOES  
19 1-100,

20 Defendants.

21 **OPPOSITION TO PLAINTIFFS'**  
22 **MOTION FOR POSTING APPEAL**  
23 **BONDS**

24 Objector Jo Batman files this her Opposition to Motion for Posting Appeal Bonds by  
25 Objectors.

26 Plaintiffs move for an appeal bond pursuant to Rule 7 of the Federal Rules of Appellate  
27 Procedure as to the Objectors. Specifically, Plaintiffs assert the following: "Plaintiffs anticipate  
28 that they will incur significant taxable costs of the appeal, including copies of additional excerpts

1 of record, copies of briefs, and costs of filing fees and motions, of at least \$1,500, as well as  
2 administrative costs of appeal to be incurred by the Settlement Administrator in the amount of  
3 \$30,450. Plaintiffs therefore request that the Court require all objectors to each obtain a bond in  
4 the amount of \$32,000 for the appeal.”

5 Objector Jo Batman opposes the imposition of any bond amount over and above \$1,500,  
6 which is Plaintiffs’ estimate of taxable costs for this appeal. Class Plaintiffs may obtain a bond  
7 for anticipated costs under Rule 7 FRAP, but those costs are limited to those set forth in Rule 39  
8 FRAP. Under Rule 7 FRAP, a bond cannot include attorneys’ fees or administrative costs.  
9 Objectors/Appellants’ objections to the settlement and Class Counsel’s attorneys’ fees and their  
10 appeal from the order overruling their objections to the settlement and Class Counsel’s fees, are  
11 facially not frivolous and their appeal is highly unlikely to be declared so by the appellate panel.  
12

13 It is clear that Class Counsel is seeking a bond from all Objectors is in an attempt to stifle  
14 objectors’ appeal from this Court’s approval of the settlement and their attorneys’ fees. That is  
15 not a proper use of the rules relating to bonding, and the Court should not allow it pursuant to  
16 Rule 7 FRAP.  
17

18 The overarching theme of Class Plaintiffs’ request for a bond in this case is that Objectors’  
19 objection to the settlement and Class Counsel’s fees are frivolous, and that Objectors’ counsel  
20 are “professional objectors” who pursue objections for improper purposes. The allegation is  
21 made that by filing appeals, the objectors hope to receive fees but it goes without saying that  
22 Class Counsel can simply refuse and allow the appeal to be decided by an appellate court.  
23

24 First, an appeal is frivolous if “the result is obvious or if the claims of error are wholly  
25 without merit.” *DeWitt v. Western Pacific Railroad Co.*, 719 F.2d 1448, 1451 (9th Cir. 1983).  
26 See also *Azizian v. Federated Department Stores, Inc.*, 499 F.3d 950, 960 (9th Cir. 2007).  
27  
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1 It is well established that whether an appeal is frivolous is solely within the purview of  
2 the appellate court not the district court. *Vaughn v. American Honda Motor Co., Inc.*, 507 F.3d  
3 295, 299 (5th Cir. 2007); *In re American President Lines, Inc.*, 779 F.2d 714, 717 (D.C. Cir.  
4 1985). Only the appellate court has the authority to impose sanctions for a frivolous appeal.  
5 *Azizian*, 499 F.3d at 960.

6 A district court does *not* have any “inherent or rule-based power” to impose an appeal  
7 bond beyond “security for payment of costs on appeal.” *American President Lines*, 779 F.2d at  
8 716, 718-19. Moreover, the “costs referred to [in Rule 7] are simply those that may be taxed  
9 against an unsuccessful litigant under Federal Appellate Rule 39.” *American President Lines*,  
10 779 F.2d at 716.

12 Nor do “costs” under Rule 7 include administrative costs. While the plaintiffs claim they  
13 are seeking an appeal bond, what they are really seeking is a *supersedeas* bond under Fed. R.  
14 App. Proc. 8, which is a bond for administrative costs. The difference between a *supersedeas*  
15 bond and an appeal bond is important: an appeal bond is a precondition for appeal, while an  
16 appellant can choose to forgo paying a *supersedeas* bond. *American President Lines*, 779 F.2d at  
17 717-18. But there is no question that the requirements for Fed. R. App. Proc. 8 are not met  
18 because Ms. Batman has not sought a stay of this Court’s ruling. Fed. R. App. Proc. 7 does not  
19 give a district court authority to write Fed. R. App. Proc. 8 out of the rules of federal procedure  
20 and require a bond for administrative costs as a precondition for appeal. *American President*  
21 *Lines*, 779 F.2d at 718-19. Moreover, if indeed increased administrative costs are approximately  
22 \$30,000, Plaintiffs should not be able to multiply that figure by each of the objectors who  
23 appealed. The same is true of all of the costs on appeal. In any event, the 9<sup>th</sup> Circuit has not yet  
24 allowed appeal bonds under Rule 7 to cover increased administrative expenses under these  
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1 circumstances. The appeal bond motion should be denied.


2 Objector Jo Batman incorporates by reference any response or opposition filed by any  
3 other objector to the bond motion to the extent not inconsistent herewith. Class Counsel's  
4 motion for a bond should be denied except insofar as Objector Jo Batman has no opposition to  
5 posting a bond for Plaintiffs' estimated taxable costs of \$1,500.

6 I have sought legal advice and assistance in this matter by Bandas Law Firm, P.C.,  
7 Corpus Christi, Texas, and this document was prepared with the assistance of counsel, no special  
8 favor or treatment is requested due to the fact that any document I submit is filed *pro se*.  
9

10 Dated: January 23, 2014  
11

12 Respectfully submitted,

13 By:

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17 *Pro Se Objector/Appellant Jo Batman*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of January, 2014 I filed the foregoing with the Clerk of the Court using FedEx Priority Overnight delivery. I further certify that I caused the foregoing document to be sent via USPS First Class mail to the following participants, postage prepaid, at the addresses listed below:

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